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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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12 SATURNINO PRADO,) No. CV 10-2931-JHN(CW)
13)
14 Petitioner,) ORDER DISMISSING PETITION
15) AS SUCCESSIVE
16 v.)
17 ALICE E. ALTOON,)
18)
19 Respondent.)
20 _____)
21

22 The pro se petitioner is a prisoner in state custody pursuant to
23 a 2000 conviction in California Superior Court, Los Angeles County,
24 Case No. BA195408. The present petition for writ of habeas corpus was
25 filed in the Northern District of California on March 8, 2010, in Case
26 No. CV 10-981-JWS(PR). It was ordered transferred to this district
27 where it was filed on April 20, 2010.

28 The present petition challenges Petitioner's conviction in Los
Angeles Superior Court Case No. BA195408. Petitioner has brought
several prior federal habeas petitions that challenged the same
conviction. One of these petitions, Prado v. Specter, No. CV 05-4053-
GHK(CW), was dismissed with prejudice, as untimely, in a judgment

1 entered November 15, 2006. Five other petitions have been dismissed
2 without prejudice. See Prado v. McGrath, No. CV 04-456-GHK(CW)
3 (dismissed as unexhausted); Prado v. Spector, No. CV 07-2532-GHK(CW)
4 (dismissed as successive); Prado v. Knowles, No. CV 07-3355-GHK(CW)
5 (successive); and Prado v. Warden, No. CV 08-6909-GHK(CW)(successive),
6 and Prado v. Warden, No. CV 08-7458-GHK(CW)(successive).

7 DISCUSSION

8 A new habeas petition under 28 U.S.C. § 2254, which challenges
9 the same state court judgment addressed in one or more prior § 2254
10 petitions, is a second or successive petition. A federal district
11 court may not consider a second or successive petition unless the
12 petitioner has first obtained an order from the proper federal circuit
13 court of appeals authorizing the district court to review the new
14 petition. See 28 U.S.C. § 2244(b)(3)(A). The court of appeals may
15 only authorize review of a second or successive petition in the
16 district court if the petitioner "makes a prima facie showing [to the
17 court of appeals] that the application satisfies the requirements of"
18 28 U.S.C. § 2244(b). See 28 U.S.C. § 2244(b)(3)(C); Felker v. Turpin,
19 518 U.S. 651, 657, 116 S. Ct. 2333, 135 L. Ed. 2d 827 (1996).

20 The present petition is a second or successive petition under
21 § 2244(b)(3)(A) because it challenges the same state court judgment
22 challenged in a prior federal petition, and that prior petition was
23 dismissed with prejudice.¹ This court may not review a successive
24 petition unless the petitioner has first obtained the required order
25

26 ¹ A new petition is not subject to dismissal under § 2244(b)(3)
27 (A) based on a prior petition dismissed without prejudice (e.g., for
28 failure to exhaust state remedies). In re Turner, 101 F.3d 1323, 1323
(9th Cir. 1997). The present petition is successive based on No. CV
05-4053, which was dismissed with prejudice.

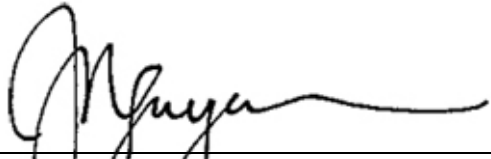
1 from the United States Court of Appeals for the Ninth Circuit. There
2 is no indication in the record that this petitioner has obtained such
3 an order. Therefore, the present petition is subject to dismissal
4 without prejudice. Petitioner may file a new petition in this court
5 if and only if he first obtains authorization from the Ninth Circuit
6 pursuant to 28 U.S.C. § 2244(b)(3)(A).

7 **ORDERS:**

8 1. It is **ORDERED** that judgment be entered dismissing the
9 petition as successive.


10 2. The clerk shall serve copies of this order and the judgment
11 herein on the petitioner.

12
13 DATED: May 4, 2010

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16 _____
JACQUELINE H. NGUYEN
United States District Judge

17 Presented by:

18 Dated: April 23, 2010

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20 _____
21 CARLA M. WOHRLE
United States Magistrate Judge